

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

**MARJORIE FERRELL, et al.,**

**Plaintiffs,**

**V.**

**WYETH-AYERST LABORATORIES, INC.,  
et al.,**

**Defendants.**

**Civil Action No. C-1-01-447**

**Judge Sandra S. Beckwith**

**Magistrate Judge Timothy S. Hogan**

**WYETH'S OPPOSITION TO PLAINTIFFS' MOTION REQUESTING LEAVE  
TO ADD AN ADDITIONAL SUBCLASS 1 REPRESENTATIVE**

Wyeth opposes plaintiffs' motion for leave to add an additional class representative for the following reasons.

1. On February 2, 2005, this Court ordered plaintiffs to submit any additional subclass representatives by March 4, 2005. Doc. No. 118. This order was an exception to the provision in the parties' Joint 26(f) Report, that "[t]he cut-off date for filing any motion to amend the pleadings and/or to add additional parties is March 1, 2002." Doc. No. 18.
2. Plaintiffs submitted two class representatives for Subclass 1 on March 4, 2005. Plaintiffs did not suggest to the Court at that time that they would be seeking leave to add additional class representatives for Subclass 1 after the Court's deadline.

3. Plaintiffs *did* request additional time to designate a representative for Subclass 6. The Court denied that request on March 8, 2005. Doc. No. 121.

4. Nevertheless, plaintiffs now seek to add an additional Subclass 1 representative a week after the deadline on the ground that they were unable “to execute a retainer agreement” in timely fashion. Plaintiffs do not explain why it was not possible to obtain an executed retainer agreement prior to March 4.

5. Plaintiffs claim that they should be permitted to name an additional class representative for Subclass 1 because they have already identified two other subclass representatives. (Pl. Motion at ¶ 4). On the contrary, the fact that the subclass is already represented by two other consumers means that there is no reason to add yet a third representative of the subclass.

6. Plaintiffs’ assertion that Wyeth “will not be prejudiced by the addition of another Subclass 1 representative” is incorrect. Wyeth will have to devote additional resources to discovery to ascertain whether or not the new class representative is “adequate” within the meaning of Fed. R. Civ. P. 23.

7. Ms. Berg — the putative representative — will not be prejudiced by denial of this motion because, as long as she meets the definition of the class, she qualifies as a class member and will be bound by any judgment entered as to the class.

Respectfully submitted,

s/Grant S. Cowan

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Dated: March 16, 2005

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that a copy of the foregoing has been served electronically this 16<sup>th</sup> day of March 2005 on all Counsel of Record with the CM/ECF Registration and by facsimile and overnight delivery on the following:

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